

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of License of:

OAH No.: 2012101080

CYNTHIA LYNN CRUZ
7622 Katella Ave., Apt. 335
Stanton, CA 90680


Vocational Nurse License No.
VN 151032

Petitioner.

ORDER DELAYING DECISION

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational
Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the
above-stated case until March 2, 2013. The purpose of the delay is to permit the Board to review
your Petition for Reconsideration.

IT IS SO ORDERED this 15th day of February, 2013.


Todd D'Braunstein, PT
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of License of:

OAH No. 2012101080

CYNTHIA LYNN CRUZ

Petitioner.

DECISION

This matter was heard on November 8, 2012, before a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

Jeffrey M. Phillips, Deputy Attorney General, appeared pursuant to Business and Professions Code section 2878.7, subdivision (b).

Petitioner Cynthia Lynn Cruz represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 8, 2012.

SUMMARY

Petitioner seeks reinstatement of her vocational nurse license, which was revoked effective June 14, 2003. The evidence established that she has an extensive history of engaging in criminal conduct and illicit drug use. And while she has lived a crime-free life since engaging in the conduct that led to her February 2008 conviction and has made great efforts towards obtaining and maintaining her sobriety from illicit drugs, she was released from parole only one and one-half years ago and anticipates continuing in a methadone treatment program for heroin addiction for another year. Therefore, petitioner did not produce sufficient evidence of her ability to perform the duties of a vocational nurse in a manner consistent with public health, safety, and welfare, and her Petition must be denied.

FACTUAL FINDINGS

1. On January 25, 1991, the Board issued petitioner Vocational Nurse License No. VN 151032 (license). The license expired September 30, 2004, and has not been renewed.

2. On August 23, 2002, an Accusation was filed seeking to discipline petitioner's license on the following grounds:

a. Making a False Statement: On June 15, 1990, petitioner signed the application for her vocational nurse license certifying under penalty of perjury that the information provided was true and correct. In response to Question No. 4, which asked whether she had ever been convicted of a criminal offense, she answered "no." The truth of the matter, however, was that she had been convicted of the following crimes on the following dates: 1) being under the influence of a controlled substance and petty theft on July 29, 1982; 2) possession of a controlled substance and robbery on June 1, 1983; 3) petty theft on June 2, 1983; and 4) receiving stolen property on July 17, 1985.

b. Making a False Statement: On September 30, 1998, petitioner signed an application to renew her license certifying under penalty of perjury that the information provided was true and correct. In response to a question whether she had been convicted of a criminal offense since she last renewed her license, she answered "no." The truth of the matter, however, was that she was convicted of a crime on July 20, 1995, as discussed below.

c. Criminal Conviction: On November 8, 1993, petitioner was convicted of unauthorized possession of a hypodermic needle and being under the influence of a controlled substance. The factual basis for those convictions was that on September 18, 1993, she had a hypodermic needle in her possession without authorization and was under the influence of heroin.

d. Criminal Conviction: On July 20, 1995, respondent was convicted of petty theft with a prior. The factual basis for the conviction was that she stole property from Mervyn's on June 23, 1995.

e. Criminal Conviction: On March 31, 2000, respondent was convicted of battery. The factual basis for the conviction was that on March 3, 2000, she inflicted a violent injury on her mother by using force and violence.

f. Unprofessional Conduct: Petitioner engaged in unprofessional conduct by being under the influence of a controlled substance on November 8, 1993.

3. A Default Decision and Order finding cause to discipline petitioner's license on each of the grounds alleged in the Accusation and revoking the license was issued on May 15, 2003, and became effective June 14, 2003.

4. On July 30, 2012, the Board received petitioner's Petition for Reinstatement of License (Petition).

5. In the Petition, petitioner provided the following reason why the Board should grant her Petition:

Nursing is the career I picked at the age of 27 yrs old. I am 50 yrs old now. I love nursing and would very much like to retire as a nurse. Nurses run in my family and taking care of people is a blessing to me.

6. Petitioner was the sole witness at hearing. She has worked as a private caretaker for an elderly gentleman since February 2004. That gentleman wrote the following in correspondence addressed to the Board:

In the spring of 2004 Cynthia Cruz [sic] was recommended to me by a friend. After interviewing Cynthia [sic] and checking her past employers, I found all she had told me was fact and her past employers was [sic] correct. I made Miss Cruz [sic] a [sic] offer she has worked for me taking care of my recovery after triple bypass and most recent kidney removal [sic]. Her care and concern for my well being foremost [sic] in her mind. I had numerous hospital stays and she has brought me back to health everytime [sic]. Miss Cruz's [sic] work ethic, skills and hard work kindness is the only reason for my quick recovery, giving meds talking to Doctors [sic]. What impressed me is her attendance to AA and NA meetings [sic] also her devotion to church every week as well as her church group called Breaking the Chains. I feel I have been blessed with her continuous [sic] help. Cynthia has been more than [sic] a health care giver but a asset [sic] and warm and welcome friend. Cynthia is first to help those in need. She is the kind of person we need more of in our world. I am glad she came along when she did and pulled me out of darkness. All the people I have known in the course of my 68 years I have to put her at the top of my list as a high ranking in our country. I know her for dedication [sic] and hard work. Thankyou [sic] for giving me the opportunity [sic] to tell someone. Feel free to call me for any questions at ...

7. Petitioner admitted to four additional criminal convictions since her license was revoked. The last two were both drug-related and resulted in her going back to state prison. Her drug of choice has always been heroin, although she has also used cocaine. Petitioner has not taken any illegal controlled substances since her last conviction in February 2008, and she successfully completed two drug treatment programs while in prison. She was paroled from prison in March 2010 and released from parole on May 6, 2011.

8. Shortly after petitioner was paroled from state prison, she voluntarily began methadone treatment for heroin addiction at Hawaiian Gardens Medical and Treatment Center in Hawaiian Gardens, California. She explained methadone eliminates the craving for heroin, and she is still receiving treatment. Treatment at Hawaiian Gardens Medical and Treatment Center initially consisted of daily visits to the clinic for a dose of methadone and random drug testing. After having a certain number of "clean" drug screenings, petitioner "graduated" to weekly visits to the clinic to pick up a weekly "take home" supply of methadone, as well as individual drug counseling and possible drug testing. Petitioner also participates in a weekly two-hour group counseling program at Calvary Chapel Westgrove Church called Breaking the Chains. She attends Alcoholics Anonymous or Narcotics Anonymous meetings "every now and again."

9. Petitioner has been participating in an online drug and alcohol studies certification program through Cypress Community College since the spring of 2011. She explained she would like to complete that program before stopping methadone treatment because she wants to "see what substances do to the body." She anticipates stopping methadone treatment in about one year.

10. Petitioner introduced several character reference letters. None of the authors, however, expressed any knowledge of petitioner's history of committing crimes and using illicit drugs. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.2d 933, 940 [a character reference is not probative of rehabilitation if the author is not aware of all facts and circumstances surrounding the acts for which rehabilitation is important].) Therefore, none of the letters were given much weight.

11. When considering a petition for reinstatement, the issue is whether the petitioner has been rehabilitated since engaging in the conduct for which her license was revoked. The Board has adopted criteria for evaluating any such rehabilitation. California Code of Regulations, title 16, section 2522, provides as follows:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.

- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

12. Respondent has an extensive history of committing crimes and using illicit drugs. While she has lived a crime-free life since engaging in the conduct that led to her last conviction in February 2008, she was released from parole only one and one-half years ago. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to a person's good behavior while on probation or parole because such conduct is expected].) Additionally, while petitioner is to be commended for her efforts to gain and maintain her sobriety from illicit drugs and is encouraged to continue such efforts, she is still participating in methadone treatment and anticipates doing so for another year. Under all the facts and circumstances herein, it would be contrary to public health, safety, and welfare to reinstate petitioner's vocational nurse license at this time. Therefore, petitioner's Petition for Reinstatement of License must be denied.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2878.7 the following about a petition for reinstatement of license:

- (a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including

modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the

Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

2. For the reasons discussed in Factual Finding 12, petitioner failed to establish by clear and convincing evidence the existence of good cause to reinstate her vocational nurse license. Therefore, her Petition for Reinstatement of License is denied.

ORDER

Petitioner Cynthia Lynn Cruz's Petition for Reinstatement of License is DENIED.

This Decision shall become effective on **FEB 20 2013**

IT IS SO ORDERED **FEB 05 2013**



TODD D'BRAUNSTEIN, P.T.

President

Board of Vocational Nursing &
Psychiatric Technicians